

ORIGINAL
FILED

2008 JUL 28 P 12:55
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Gregory M. Fox, State Bar No. 070876
Dana L. Soong, State Bar No. 168160
BERTRAND, FOX & ELLIOT
The Waterfront Building
2749 Hyde Street
San Francisco, California 94109
Telephone: (415) 353-0999
Facsimile: (415) 353-0990

E-filing

Attorneys for Defendants
CITY OF SUNNYVALE,
CHRIS SEARLE and DARREN PANG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 08

3598PVT

ERIKA CANAS, JOSE CANAS, a minor, by
and through his guardian ad litem, and JESUS
CANAS, by and through his guardian ad litem,

Plaintiffs,

vs.

CITY OF SUNNYVALE, CHRIS SEARLE,
DARREN PANG and DOES ONE through
TWENTY-FIVE,

Defendants.

Case No.:

NOTICE OF REMOVAL OF SANTA CLARA
COUNTY SUPERIOR COURT ACTION
NO. 108CV113838 UNDER 28 U.S.C. §
1441(b) [Federal Question] AND DEMAND
FOR JURY TRIAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendants CITY OF SUNNYVALE, CHRIS SEARLE and
DARREN PANG hereby remove to this court the state court action described below:

1. On June 2, 2008 Action No. 108CV113838 was commenced in the Superior Court
of the State of California, in and for the County of Santa Clara entitled Erika Canas, Jose Canas, a
minor, by and through his guardian ad litem and Jesus Canas, a minor, by and through his guardian
ad litem, v. City of Sunnyvale, Chris Searle, Darren Pang, and Does 1 through 25. A true copy of
plaintiffs' complaint is attached hereto as Exhibit "A".

2. The first date upon which defendant CITY OF SUNNYVALE was served with said
summons and complaint was on or about the June 30, 2008, when Defendant CITY received a copy

1 of the complaint and summons from the state court by service of process on the City Clerk. A true
2 copy of the summons is attached hereto as Exhibit "B." Thereafter by letter on July 16, 2008
3 counsel for defendants Gregory M. Fox advised plaintiffs' counsel that he had received authority to
4 accept service on behalf of defendants CHRIS SEARLE and DARREN PANG.

5 3. This action is a civil action of which this court has original jurisdiction under 28
6 U.S.C. §1331, and is one which may be removed to this Court by defendant pursuant to 28 U.S.
7 C. §1441(b). The Second Cause of Action in paragraphs 17 and 19 alleges the decedent Jose
8 Francisco Canas was deprived of his Civil Rights when, while exercising his constitutional right,
9 the defendants, police officers of the City of Sunnyvale, committed violence against him by
10 shooting him to death on September 12, 2007. It is further alleged in the Second Cause of Action,
11 paragraphs 18 and 20, that said defendants interfered or threatened to interfere with the "Plaintiff's
12 [sic]" constitutional or statutory rights by threatening or committing violent acts and that they
13 injured the "plaintiff [sic]" or the plaintiff's property to prevent the plaintiff from exercising his or
14 her constitutional rights or to retaliate against the plaintiff for having exercised his or her
15 constitutional rights. By Constitutional rights the defendants assume the decedent and plaintiffs,
16 and each of them, are alleging that defendants violated those rights guaranteed to them under the
17 Fourth and Fourteenth Amendments to the United States Constitution.

18
19 Dated: July 28, 2008

BERTRAND, FOX & ELLIOT

20
21 By: 

22 Gregory M. Fox

23 Attorneys for Defendants

24 CITY OF SUNNYVALE, CHRIS SEARLE and
25 DARREN PANG
26
27
28

EXHIBIT A

1 **ROBERTS & ELLIOTT LLP**
2 JAMES ROBERTS, SBN 98804
3 Ten Almaden Boulevard
4 Suite 500
5 San Jose, CA 95113
6 Telephone: (408) 275-9800
7 Fax: (408) 287-3782

8 Attorneys for Plaintiffs

ENDORSED FILED

08 JUN -2 PM 12:23

CLERK OF COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
BY Diante DEPUTY

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 ERIKA CANAS, JOSE CANAS, a minor,)
13 by and through his guardian ad litem)
14 and JESUS CANAS by and through his)
15 guardian ad litem,)

16 Plaintiffs,

17 vs.

18 CITY OF SUNNYVALE, CHRIS
19 SEARLE, DARREN PANG and DOES
20 ONE through TWENTY-FIVE,

21 Defendants.

108CV113838

No.

COMPLAINT

Wrongful Death

22 Plaintiffs complain of Defendants and each of them, and alleges:

23 **GENERAL ALLEGATIONS**

24 1. Plaintiff does not know the true names and capacities of the Defendants sued
25 herein as DOES 1 through 25, inclusive, and therefore sue such fictitious Defendants by
26 such fictitious names. Plaintiff will amend this complaint to state the true names and
27 capacities of said Defendants when the same become known to Plaintiff, Plaintiff is
28 informed and believes, and on that basis alleges, that each of said fictitious Defendants
is negligent or otherwise responsible for the matters alleged herein and proximately caused
the damages complained of herein. DOES 1 through 15 are employees/agents/officers

1 of Defendant the City of Sunnyvale acting withing the scope of his employment/agency.

2 2. Plaintiff is informed and believes, and on that basis alleges, that on each
3 occasion mentioned herein, each of the Defendants was the agent and/or employee of
4 each of the other Defendants mentioned herein and was acting within the scope and
5 course of his agency and/or employment at the times and places mentioned herein. All
6 acts alleged to have been done by each Defendant were both ratified and authorized by
7 the remaining Defendants.

8 3. Decedent Jose Francisco Canas is deceased, having passed on
9 September 12, 2007. Plaintiffs are the sole surviving heirs of Decedent Jose Canas.

10 4. Plaintiff Erika Canas is an individual. Plaintiff Erika Canas is the wife and heir
11 of Jose Francisco Canas, deceased.

12 5. Plaintiff Jose Emmanuel Canas is an individual and a minor born March 28,
13 2006. Plaintiff Jose Emmanuel Canas is the son and heir of Jose Francisco Canas,
14 deceased. Plaintiff Jose Emmanuel Canas is represented in this action by his guardian
15 ad litem.

16 6. Plaintiff Jesus Canas is an individual and a minor born March 28, 2006.
17 Plaintiff Jesus is the son and heir of Jose Francisco Canas, deceased. Plaintiff Jesus
18 Canas is represented in this action by his guardian ad litem.

19 7. Defendant City of Sunnyvale is a public entity, duly organized and existing
20 under the laws of the State of California and situated in the County of Santa Clara.

21 8. Defendant Chris Searle is an individual, and at all times mentioned herein,
22 an employee/agent/officer of Defendant the City of Sunnyvale acting withing the scope of
23 his employment/agency.

24 9. Defendant Darren Pang is an individual, and at all times mentioned herein,
25 an employee/agent/officer of Defendant the City of Sunnyvale acting withing the scope of
26 his employment/agency.

27 10. On or about December 26, 2007, Plaintiffs, and each of them, presented to
28 Defendant the City of Sunnyvale a claim for the injuries, disability, losses, and damages

1 suffered and incurred by each of them by reason of the above-described occurrence, all
2 in compliance with the requirements of Government Code Section 905. A copy of the
3 claims are attached hereto as **Exhibit A** and made a part hereof.

4 11. Defendant the City of Sunnyvale failed to act on the claim within the period
5 of 45 days after its presentation, and the claim was thus deemed rejected, under the
6 provisions of Government Code Section 912.4, at the expiration of the 45-day period.

7 **FIRST CAUSE OF ACTION**
8 ***Negligence***

9 12. Plaintiffs incorporate the allegations of paragraphs One through Eleven
10 inclusive into this count.

11 13. On or about September 12, 2007, in Sunnyvale, California, Defendants, Chris
12 Searle and Darren Pang, and Does One through Ten, and each of them, negligently shot
13 Jose Francisco Canas to death. At the time he was shot to death, Jose Francisco Canas
14 was situated in his car on a public street and not acting in a manner sufficient to cause the
15 use of lethal force.

16 14. As a proximate result of the aforesaid negligence of said Defendants, and
17 each of them, and of the death of decedent, Plaintiffs, and each of them have sustained
18 pecuniary loss resulting from the loss of the society, comfort, attention, services, and
19 support of decedent in a sum according to proof.

20 15. As a proximate result of the aforesaid negligence of Defendants, and each
21 of them, and of the death of decedent, Plaintiff Erika Canas has incurred funeral and burial
22 expenses in a sum according to proof.

23 **SECOND CAUSE OF ACTION**
24 ***Civil Rights Violation***

25 16. Plaintiffs incorporate the allegations of paragraphs One through Eleven
26 inclusive into this count.

27 17. On or about September 12, 2007, in Sunnyvale, California, Defendants, Chris
28 Searle and Darren Pang, and Does One through Ten, and each of them, shot Jose

1 Francisco Canas to death.

2 18. At said time and place, said Defendants interfered with or attempted to
3 interfere with the Plaintiff's constitutional or statutory right by threatening or committing
4 violent acts.

5 19. The decedent reasonably believed that if he exercised his or her
6 constitutional right, said Defendants would commit violence against him or his property.

7 20. Said Defendants injured the Plaintiff or the Plaintiff's property to prevent the
8 Plaintiff from exercising his or her constitutional right or to retaliate against the Plaintiff for
9 having exercised his or her constitutional right.

10 21. As a proximate result of the aforesaid negligence of said Defendants, and
11 each of them, and of the death of decedent, Plaintiffs, and each of them have sustained
12 pecuniary loss resulting from the loss of the society, comfort, attention, services, and
13 support of decedent in a sum according to proof.

14 22. As a proximate result of the aforesaid negligence of Defendants, and each
15 of them, and of the death of decedent, Plaintiff Erika Canas has incurred funeral and burial
16 expenses in a sum according to proof.

17 **WHEREFORE**, Plaintiffs, and each of them pray judgment as follows:

- 18 1. For general damages according to proof;
19 2. For funeral and burial expenses for Plaintiff Erika Canas according to proof;
20 3. For interest as allowable by law, including interest on all economic damages
21 in the legal amount from September 12, 2007, to the date of judgment;
22 4. For costs of suit herein incurred; and
23 5. For such other and further relief as the court may deem proper.

24 ROBERTS & ELLIOTT LLP
25 Attorneys for Plaintiffs

26 DATED: 5.28.08

By: [Signature]

JAMES ROBERTS, Esq.
Attorney at Law

EXHIBIT A



CLAIM AGAINST THE CITY OF SUNNYVALE

City Of Sunnyvale
City Clerk
P.O. Box 3707
Sunnyvale, CA 94088-3707
(408) 730-7494

Our Claim #: _____

RESERVED FOR CITY STAMP

WITH CERTAIN EXCEPTIONS, CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE MUST BE FILED WITHIN SIX MONTHS OF THE INCIDENT GIVING RISE TO THE CLAIM.

Claimant must complete each section; if information is unknown write "unknown." Use the back of this form, or a separate sheet of paper if necessary (Please Print)

Name: ERIKA CANAS Daytime telephone #: C/o (408) 275-9800Address: 2512 Glade DriveCity: Santa Clara State: CA Zip: 95051Date and time of loss: September 12, 2007
Approximately 11:30 A.M. / HXX Police report #: UnknownHas your Insurance company been notified? ☒ Yes ☐ NoCompany: Kaiser Policy #: 9461231-9455584 Phone #: (800) 723-3365Location the incident occurred: 1148 Ayala Drive, Sunnyvale, CACause of loss, injury or damage: Please see Attachment A.In detail, describe damage or injury: Please see Attachment B.Name of witness or City employee (s) involved: Chris Searle and Darren Pang and other persons unknown to Claimant(s).

Name and address of person to whom all correspondence should be sent (If different from above):

James Roberts
ROBERTS & ELLIOTT LLP
Ten Almaden Boulevard
Suite 500
San Jose, CA 95113

Amount of claim and basis for computation \$ _____ Government Code requires that if the claim is for less than \$10,000, the amount of the claim shall be entered. If the Claim is for more than \$10,000, no dollar amount need be entered, but the claim must indicate whether the claim would be a ☐ limited or ☒ unlimited civil case.

*Attach copies of itemized receipts, estimates, photos or other documentation of your claim

I certify that the foregoing is true and correct. Submitted by:

Signature: _____

Date: 9-26-07

Penal code, Section 550, false or fraudulent claims: It is unlawful to: knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss, knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented in support of any false or fraudulent claim, knowingly assist, abet, solicit, or conspire with any person, who knowingly presents any false or fraudulent claim for the payment of a loss, or who knowingly prepares, makes, or subscribes any writing, with the intent to present or use it, or allow it to be presented in support of any claim. Every person who violates any provision of this section shall be punished by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both.

White: Risk and Insurance copy

Yellow: Claimants copy

1 Claim Against the City of Sunnyvale

2 Claimant: Ericka Canas

3 Attachment A

4 This claim is based upon death of Jose Canas and damage to
5 personal property sustained by Claimant on or about September 12,
6 2007 at or near 1148 Ayala Drive, Sunnyvale, California, under the
7 following circumstances: On or about September 12, 2007, without
8 justification, Jose Canas was shot and killed after his car was
9 rammed. Jose Canas was shot and killed by employees/agents/officers
10 of the City of Sunnyvale acting within the scope of their
11 employment/agency. Such acts and/or omissions on the part of said
12 public entity were negligent or otherwise such that liability was
13 incurred. Erika Canas is the surviving widow of Jose Canas. Jose
14 Canas and Jesus Canas are the surviving minor children of Jose
15 Canas.

1 Claim Against the City of Sunnyvale

2 Claimant: Ericka Canas

3 Attachment B

4 The injuries, damage, and loss for which this claim is made,
5 so far as is now known, are sufficient to involve jurisdiction of
6 the Superior Court, such damages computed as of the date of
7 presentation of this claim, include, but are not limited to:

8 1. The financial support that Jose Canas would have
9 contributed to the family during either the life expectancy that
10 Jose Canas had before his death or the life expectancy of
11 Claimant(s), whichever is shorter;

12 2. The loss of gifts or benefits that Claimant(s) would have
13 expected to receive from Jose Canas;

14 3. Funeral and burial expenses;

15 4. The reasonable value of household services that Jose
16 Canas would have provided;

17 5. The loss of Jose Canas' love, companionship, comfort,
18 care, assistance, protection, affection, society, moral support;

19 6. The loss of Jose Canas' training and guidance;

20 7. Property damage;

21 8. Loss of a consortium.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action; my business address is Ten Almaden Boulevard, Suite 500, San Jose, California.

On December 26, 2007, I served the document described as **CLAIM AGAINST THE CITY OF SUNNYVALE (Erika Canas)** in this action by:

By placing a true copy thereof in a sealed United States Postal Service envelope for collection and mailing following ordinary business practices at my aforesaid business address; I am readily familiar with the business' practice of collection and processing of correspondence for mailing with the United States Postal Service; that correspondence is deposited with the United States Postal Service, the same day as collection in the ordinary course of business.

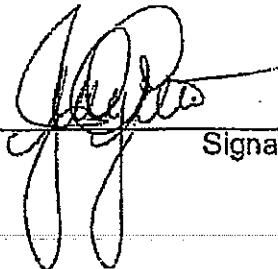
The name(s) and address(es) of the persons served as shown on the envelope are as follows:

City of Sunnyvale
City Clerk
P.O. Box 3707
Sunnyvale, CA 94088-3707

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7007 1490 0000 4620 3722

Executed on December 26, 2007, at San Jose, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Signature



CLAIM AGAINST THE CITY OF SUNNYVALE

City Of Sunnyvale
City Clerk
P.O. Box 3707
Sunnyvale, CA 94068-3707
(408) 730-7494

Our Claim #: _____

RESERVED FOR CITY STAMP

WITH CERTAIN EXCEPTIONS, CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE MUST BE FILED WITHIN SIX MONTHS OF THE INCIDENT GIVING RISE TO THE CLAIM.

Claimant must complete each section; if information is unknown write "unknown." Use the back of this form, or a separate sheet of paper if necessary (Please Print)

Name: JOSE CANAS Daytime telephone #: c/o (408) 275-9800Address: 2512 Glade DriveCity: Santa Clara State: CA Zip: 95051Date and time of loss: September 12, 2007
Approximately 11:30 A.M. /RXX Police report #: UnknownHas your Insurance company been notified? ☒ Yes ☐ NoCompany: Kaiser Policy #: 9461231-9455584 Phone #: (800) 723-3365Location the incident occurred: 1148 Ayala Drive, Sunnyvale, CACause of loss, injury or damage: Please see Attachment A.In detail, describe damage or injury: Please see Attachment B.Name of witness or City employee (s) involved: Chris Searle and Darren Pang and other persons unknown to Claimant(s).

Name and address of person to whom all correspondence should be sent (if different from above):

James Roberts
ROBERTS & ELLIOTT LLP
Ten Almaden Boulevard
Suite 500

San Jose, CA 95113

Amount of claim and basis for computation \$ _____ Government Code requires that if the claim is for less than \$10,000, the amount of the claim shall be entered. If the Claim is for more than \$10,000, no dollar amount need be entered, but the claim must indicate whether the claim would be a ☐ limited or ☒ unlimited civil case.

*Attach copies of itemized receipts, estimates, photos or other documentation of your claim

I certify that the foregoing is true and correct. Submitted by:

Signature: _____

Date: 12-28-07

Penal code, Section 500, false or fraudulent claims: It is unlawful to: knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss, knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented in support of any false or fraudulent claim, knowingly assist, solicit, or conspire with any person, who knowingly presents any false or fraudulent claim for the payment of a loss, or who knowingly prepares, makes, or subscribes any writing, with the intent to present or use it, or allow it to be presented in support of any claim. Every person who violates any provision of this section shall be punished by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both.

• White: Risk and insurance copy

Yellow: Claimants copy

1 Claim Against the City of Sunnyvale

2 Claimant: Jose Canas

3 Attachment A

4 This claim is based upon death of Jose Canas and damage to
5 personal property sustained by Claimant on or about September 12,
6 2007 at or near 1148 Ayala Drive, Sunnyvale, California, under the
7 following circumstances: On or about September 12, 2007, without
8 justification, Jose Canas was shot and killed after his car was
9 rammed. Jose Canas was shot and killed by employees/agents/officers
10 of the City of Sunnyvale acting within the scope of their
11 employment/agency. Such acts and/or omissions on the part of said
12 public entity were negligent or otherwise such that liability was
13 incurred. Erika Canas is the surviving widow of Jose Canas. Jose
14 Canas and Jesus Canas are the surviving minor children of Jose
15 Canas.

1 Claim Against the City of Sunnyvale

2 Claimant: Jose Canas

3 Attachment B

4 The injuries, damage, and loss for which this claim is made,
5 so far as is now known, are sufficient to involve jurisdiction of
6 the Superior Court, such damages computed as of the date of
7 presentation of this claim, include, but are not limited to:

8 1. The financial support that Jose Canas would have
9 contributed to the family during either the life expectancy that
10 Jose Canas had before his death or the life expectancy of
11 Claimant(s), whichever is shorter;

12 2. The loss of gifts or benefits that Claimant(s) would have
13 expected to receive from Jose Canas;

14 3. Funeral and burial expenses;

15 4. The reasonable value of household services that Jose
16 Canas would have provided;

17 5. The loss of Jose Canas' love, companionship, comfort,
18 care, assistance, protection, affection, society, moral support;

19 6. The loss of Jose Canas' training and guidance;

20 7. Property damage.
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action; my business address is Ten Almaden Boulevard, Suite 500, San Jose, California.

On December 26, 2007, I served the document described as **CLAIM AGAINST THE CITY OF SUNNYVALE (Jose Canas)** in this action by:

By placing a true copy thereof in a sealed United States Postal Service envelope for collection and mailing following ordinary business practices at my aforesaid business address; I am readily familiar with the business' practice of collection and processing of correspondence for mailing with the United States Postal Service; that correspondence is deposited with the United States Postal Service, the same day as collection in the ordinary course of business.

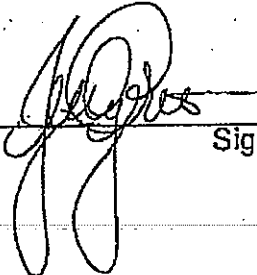
The name(s) and address(es) of the persons served as shown on the envelope are as follows:

City of Sunnyvale
City Clerk
P.O. Box 3707
Sunnyvale, CA 94088-3707

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7007 1490 0000 4620 3739

Executed on December 26, 2007, at San Jose, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Signature



CLAIM AGAINST THE CITY OF SUNNYVALE

City Of Sunnyvale
City Clerk
P.O. Box 3707
Sunnyvale, CA 94088-3707
(408) 730-7494

Our Claim #:

RESERVED FOR CITY STAMP

WITH CERTAIN EXCEPTIONS, CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE MUST BE FILED WITHIN SIX MONTHS OF THE INCIDENT GIVING RISE TO THE CLAIM.

Claimant must complete each section; If information is unknown write "unknown." Use the back of this form, or a separate sheet of paper if necessary (Please Print)

Name: JESUS CANAS Daytime telephone #: c/o (408) 275-9800

Address: 2512 Glade Drive

City: Santa Clara State: CA Zip: 95051

Date and time of loss: September 12, 2007
Approximately 11:30 A.M. /XXX

Police report #: Unknown

Has your Insurance company been notified? ☒ Yes ☐ No

Company Kaiser Policy #: 9461231-9455584 Phone #: (800) 723-3365

Location the incident occurred: 1148 Avala Drive, Sunnyvale, CA

Cause of loss, injury or damage: Please see Attachment A.

In detail, describe damage or injury: Please see Attachment B.

Name of witness or City employee (s) involved: Chris Searle and Darren Pang and other persons unknown to Claimant(s).

Name and address of person to whom all correspondence should be sent (if different from above):

James Roberts
ROBERTS & ELLIOTT LLP
Ten Almaden Boulevard
Suite 500

San Jose, CA 95113

Amount of claim and basis for computation \$ _____ Government Code requires that if the claim is for less than \$10,000, the amount of the claim shall be entered. If the Claim is for more than \$10,000, no dollar amount need be entered, but the claim must indicate whether the claim would be a ☐ limited or ☒ unlimited civil case.

*Attach copies of itemized receipts, estimates, photos or other documentation of your claim

I certify that the foregoing is true and correct. Submitted by:

Signature: [Signature]

Date: 12-20-07

Penal code, Section 500, false or fraudulent claims: It is unlawful to: knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss, knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented in support of any false or fraudulent claim, knowingly assist, abet, solicit, or conspire with any person, who knowingly presents any false or fraudulent claim for the payment of a loss, or who knowingly prepares, makes, or subscribes any writing, with the intent to present or use it, or allow it to be presented in support of any claim. Every person who violates any provision of this section shall be punished by imprisonment in the state prison for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both.

White: Risk and insurance copy

Yellow: Claimants copy

1 Claim Against the City of Sunnyvale

2 Claimant: Jesus Canas

3 Attachment A

4 This claim is based upon death of Jose Canas and damage to
5 personal property sustained by Claimant on or about September 12,
6 2007 at or near 1148 Ayala Drive, Sunnyvale, California, under the
7 following circumstances: On or about September 12, 2007, without
8 justification, Jose Canas was shot and killed after his car was
9 rammed. Jose Canas was shot and killed by employees/agents/officers
10 of the City of Sunnyvale acting withing the scope of their
11 employment/agency. Such acts and/or omissions on the part of said
12 public entity were negligent or otherwise such that liability was
13 incurred. Erika Canas is the surviving widow of Jose Canas. Jose
14 Canas and Jesus Canas are the surviving minor children of Jose
15 Canas.

1 Claim Against the City of Sunnyvale

2 Claimant: Jesus Canas

3 Attachment B

4 The injuries, damage, and loss for which this claim is made,
5 so far as is now known, are sufficient to involve jurisdiction of
6 the Superior Court, such damages computed as of the date of
7 presentation of this claim, include, but are not limited to:

8 1. The financial support that Jose Canas would have
9 contributed to the family during either the life expectancy that
10 Jose Canas had before his death or the life expectancy of
11 Claimant(s), whichever is shorter;

12 2. The loss of gifts or benefits that Claimant(s) would have
13 expected to receive from Jose Canas;

14 3. Funeral and burial expenses;

15 4. The reasonable value of household services that Jose
16 Canas would have provided;

17 5. The loss of Jose Canas' love, companionship, comfort,
18 care, assistance, protection, affection, society, moral support;

19 6. The loss of Jose Canas' training and guidance;

20 7. Property damage.
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action; my business address is Ten Almaden Boulevard, Suite 500, San Jose, California.

On December 26, 2007, I served the document described as **CLAIM AGAINST THE CITY OF SUNNYVALE (Jesus Canas)** in this action by:

By placing a true copy thereof in a sealed United States Postal Service envelope for collection and mailing following ordinary business practices at my aforesaid business address; I am readily familiar with the business' practice of collection and processing of correspondence for mailing with the United States Postal Service; that correspondence is deposited with the United States Postal Service, the same day as collection in the ordinary course of business.

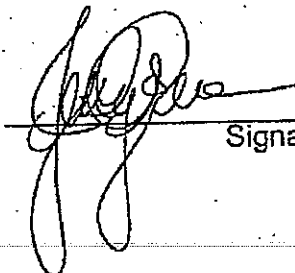
The name(s) and address(es) of the persons served as shown on the envelope are as follows:

City of Sunnyvale
City Clerk
P.O. Box 3707
Sunnyvale, CA 94088-3707

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7007 1490 0000 4620 3746

Executed on December 26, 2007, at San Jose, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Signature

EXHIBIT B

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

CITY OF SUNNYVALE, CHRIS SEARLE, DARREN LEONGS and

DOES ONE through TWENTY-FIVE

CITY OF SUNNYVALE, CA.
CITY CLERK'S OFFICE
RECEIVED-OCA

JUN 30 2008

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE) **AM 3:00 PM**

ERIKA CANAS, JOSE CANAS, a minor, by and through his guardian ad litem and JESUS CANAS by and through his guardian ad litem

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED FILED

08 JUN -2 PM 12:23

KIRI TORRE
CHIEF EXEC. OFFICER/CLERK
SUPERIOR COURT OF CA.
COUNTY OF SANTA CLARA
BY G. Duarte DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
191 North First Street
San Jose, CA 95113

CASE NUMBER
(Número del Caso):

108CV113838

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

JAMES ROBERTS, ABN 98804

(408) 275-9800

ROBERTS & ELLIOTT, LLP

Ten Almaden Boulevard, Suite 500

San Jose, CA 95113

DATE:

JUN 02 2008

Kiri Torre

Clerk, by

(Secretario)

Deputy

(Adjunto)

(Fecha)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): CITY OF SUNNYVALE

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

4. ☒ other (specify): PUBLIC ENTITY5. ☐ by personal delivery on (date):

Page 1 of 1

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Erika Canas, Jose Canas, a minor by and through his guardian ad litem and Jesus Canas, by and through his guardian ad litem

DEFENDANTS

City of Sunnyvale, Chris Searle and Darren Pang

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

Santa Clara

(c) Attorney's (Firm Name, Address, and Telephone Number)

James Roberts, SBN 98805
Roberts & Elliot LLP
Ten Almaden Blvd., Ste. 500
San Jose, CA 95113
Tel: 408.275.9800 Fax: 408.287.3782

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Gregory M. Fox, SBN 070876
BERTRAND, FOX & ELLIOT
2749 Hyde Street
San Francisco, CA 94109
Tel: 415.353.0999 Fax: 415.353.0990

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 88 1		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 630 Liquor Laws	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
			<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
			IMMIGRATION	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
			<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
			<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC Section 1441(b)

Brief description of cause:
Violation of Civil Rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$

☐ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-1 IF CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE
July 28, 2008

SIGNATURE OF ATTORNEY OF RECORD Gregory M. Fox